

The Shopfront

YOUTH LEGAL CENTRE

Apprehended Violence Orders (AVOs)

1 What is an Apprehended Violence Order?

Apprehended Violence Orders (**AVOs**) are court orders designed to protect people from violence and harassment by others.

An AVO sets out conditions to restrict a person's behaviour.

It is not a criminal charge and does not give a person a criminal record, although the details will be kept on a police database and having an AVO against you can restrict you from certain activities (e.g. getting a security licence or a firearms licence).

Breaching an AVO is a criminal offence and can result in a criminal record.

2 Types of Apprehended Violence Order

There are two types of AVO:

2.1 Apprehended Domestic Violence Order (ADVO)

An ADVO is taken out against a person in a "domestic relationship" with the person seeking the AVO. "Domestic relationship" has a very wide definition and includes relationships such as:

- current or ex-spouses (married or de facto, heterosexual or same-sex partners);
- people who are or have been in an "intimate personal relationship" (e.g. partners who don't live together);
- a new partner of your ex-partner;
- household members (including at long-term residential facilities);
- carers (unpaid or paid);
- relatives (including by marriage); or
- extended family members of Aboriginal or Torres Strait Islander people.

Where an application has been made for the protection of several people and at least one person is in a domestic relationship with the respondent, the application will be treated as an ADVO.

2.2 Apprehended Personal Violence Order (APVO)

An APVO is taken out against someone who is not in "a domestic relationship" with the person seeking protection (for example, a neighbour, colleague, classmate or stranger).

3 Terminology

AVO: Apprehended Violence Order

ADVO: Apprehended Domestic Violence Order

APVO: Apprehended Personal Violence Order

Protected person (sometimes called the “person in need of protection (PINOP)”: a person who is applying for an AVO or who has been granted an AVO by the court

Applicant or complainant: a person applying for an AVO

Informant: a police officer who takes out an AVO on someone’s behalf

Respondent or Defendant: a person who has an AVO taken out against them

Provisional or interim order: a temporary AVO, usually in force until the next court date

DVLO: a specialist police officer trained in domestic violence matters

4 Applying for an AVO

4.1 Grounds for an AVO

To get an AVO against someone you must usually show that you fear violence, stalking or intimidation from them, and that this fear is based on reasonable grounds.

There doesn’t need to have been any actual violence, but past violence is often good evidence that you have reasonable grounds to fear future violence.

Sometimes the person needing protection doesn’t actually need to hold any fears (e.g. if they are under 16, or have an intellectual disability, or have been a victim of domestic violence). It’s enough that there are reasonable grounds for them to be fearful.

4.2 Applying through the police

An application for an AVO would usually be made through the police if:

- the person seeking protection is under 18; or
- the person seeking protection has an intellectual disability; or
- there is a domestic violence situation; or
- there are related criminal charges.

Sometimes the police may seek an AVO on your behalf even if you don’t want it.

In most cases, a police officer **must** make an AVO application on behalf of a person if the police officer suspects or believes that one of the following offences has recently been (or will be) committed:

- a domestic violence offence;
- stalking/intimidation with intent to cause fear of physical or mental harm; or
- an offence of child abuse.

4.3 Applying through the court

An application for an AVO can be made directly with the court if the applicant is 16 or over.

The application is made through the Chamber Registrar of a Local Court (or Children's Court if the respondent is under 18). There is no fee, and the Chamber Registrar will help with the paperwork.

Some courts have an appointment system to see the Chamber Registrar. At others, it is on a first-come first-served basis.

To make an appointment at your nearest Local Court, call the Courts Service Centre between 8:30am and 4:30pm weekdays on 1300 679 272. Select option 2 to make an appointment. Alternatively you could email the court.

If the respondent is under 18, contact your nearest Children's Court directly.

Contact details of Local and Children's Courts are at:

http://www.localcourt.justice.nsw.gov.au/Pages/contact_us/court_locations/court_location.aspx

4.4 Which is the best way to apply: police or court?

If you are **under 16**, the only way to apply for an AVO is through the police (unless an older family member such as a parent is applying to include you in their own AVO).

If you are **over 18 and applying for an APVO**, and the police have not laid any criminal charges against the respondent, it is very unlikely that the police will apply for an AVO on your behalf, so you will need to apply through the court.

In other situations, you have a choice.

If you apply through the court, you will have to represent yourself or organise your own lawyer.

If you apply through the police, a police prosecutor will run the case at court. However, this means you have less of a say in what happens. For example, if you decide you no longer want an AVO, the police might decide to go ahead with the application anyway.

5 AVOs against the protected person's wishes

In domestic violence situations, the police will often lay charges or make an AVO application regardless of the victim's wishes.

Even if a victim has not made a report or a statement to the police, the police may take out an AVO based on their own observations and information from other people (e.g. neighbours, family members).

Once an AVO application is made by the police, it is often very difficult to have it withdrawn at the request of the victim.

In private AVO applications, the protected person can withdraw the application as they wish.

6 After you or the police have applied for an AVO

6.1 Court listing

The police or the Chamber Registrar will arrange for the AVO application to be listed in court, usually a few days away.

AVO applications are heard in the:

- **Local Court** – if the defendant is 18 or over at the time of the application
- **Children's Court** – if the defendant is under 18 at the time of the application

6.2 Provisional orders

A **provisional order** is a temporary AVO to protect the person seeking protection until the application is dealt with by a court.

A provisional order is valid once it is served on the defendant. As with a final AVO, it is a criminal offence to breach a provisional AVO.

A provisional ADVO or APVO may be made by a Magistrate or Registrar. A police officer may apply for a provisional order by phone or other electronic communication at any time, whether or not the court is sitting.

A provisional ADVO (but not an APVO) may also be made by a senior police officer above the rank of Sergeant.

There are some situations when a police officer **must** apply for a provisional order (e.g. if the officer believes that a domestic violence offence has recently been or is likely to be committed).

A private applicant cannot apply for a provisional order, but can apply for an interim order when the case goes to court.

6.3 Serving the application on the respondent

Before the court date, the police or the court will arrange for a copy of the application and any provisional order to be served on (given to) the respondent. These documents will be served by a police officer.

If the respondent cannot be located, or is trying to avoid being served with the documents, the court may issue a warrant for the respondent's arrest.

7 Court procedure - if the defendant is also charged with a criminal offence

7.1 Introduction

If someone is charged with a domestic violence offence (e.g. assaulting a family member or damaging their property), the police will usually make an ADVO application unless there is already an ADVO in place.

Usually (but not always!) the ADVO application is listed in court on the same day as the criminal charges, and will be adjourned until the criminal charges are finalised.

If someone is charged with a personal violence offence against someone who they are not in a domestic relationship with, the police will sometimes make an APVO application.

7.2 Provisional and interim orders

If there is an AVO application as well as criminal charges, the court will usually make an interim AVO until the criminal charges are finalised.

For domestic violence matters, there will usually already be a provisional order in place and in most cases this will be continued.

If a person is charged with stalking, intimidation, a domestic violence offence, or a serious violent offence (e.g. attempted murder, reckless wounding, sexual assault), ***the court must make an interim AVO unless the court is satisfied that an interim AVO is not required.***

7.3 When the criminal charges are finalised

If the defendant is found guilty of the charge(s), the court will nearly always make a final AVO.

If the defendant pleads guilty to or is found guilty of stalking, intimidation, a domestic violence offence, or a serious violent offence (e.g. attempted murder, reckless wounding, sexual assault), and the victim or police want an AVO, **the court must make a final AVO, unless the court is satisfied that an AVO is not required.**

If the defendant is found not guilty, the ADVO application will often be dismissed. However, sometimes the police prosecutor will continue with the AVO application. The standard of proof for an AVO application (the balance of probabilities) is lower than the standard of proof for a criminal charge (beyond reasonable doubt), so it is possible for the court to dismiss the criminal charge yet still make a final AVO.

8 Court procedure - if the defendant has *not* been charged with a criminal offence

8.1 On the first court date

What happens at court depends on a few things, including:

- whether the respondent has been served with the application;
- whether the application is made through the police or privately;
- whether it is an ADVO or APVO application;
- who is present at court;
- whether or not the respondent agrees to an AVO being made.

8.2 Role of Domestic Violence Liaison Officers (DVLOs) at court

A Domestic Violence Liaison Officer (DVLO) is a police officer who is specially trained to support victims of domestic violence.

There is usually at least one DVLO at court on an AVO list day. The DVLOs usually speak to the protected person and the respondent, and give instructions to the police prosecutors.

If you are the respondent, you (or your lawyer if you have one) will usually have to speak to the DVLO before you go into court. The DVLO will often explain what orders the police are seeking, and what your options are.

Even if the DVLO has explained things clearly and fairly, please remember they are working for the police and **it is always a good idea to seek your own legal advice before agreeing to anything.**

8.3 Adjournment

Sometimes the application is finalised on the first court date. However, the court may adjourn the case for reasons such as:

- if the application has not yet been served on the respondent;
- to allow the respondent to get legal advice or to negotiate with the applicant;
- in APVO applications, the court may adjourn the proceedings and send the parties to a Community Justice Centre for mediation; or
- if the defendant does not agree to an AVO being made, the matter may be adjourned for hearing on another day (see “Defended AVO applications” below).

8.4 Interim orders

If the case is adjourned, the magistrate may make an **interim order** if it appears that it is necessary or appropriate to do so. This is a temporary AVO to protect the victim before the application has been finalised.

An interim order can be made whether or not the defendant is present or has notice of the proceedings.

If there is already a **provisional order** in place, this will usually continue as an interim order.

The interim order will usually stay in force until the case is finalised. While in force, an interim AVO has the same effect as a final AVO. Breaching an interim order is a criminal offence.

8.5 Final order

The court may make a final AVO on the first court date if the respondent agrees to it.

The respondent may consent to an AVO without admitting to any of the allegations made by the applicant. The respondent may be able to negotiate some changes to the conditions in the order.

Sometimes, instead of consenting to an AVO being made, a respondent may offer **undertakings** (promises) not to do certain things. These are not enforceable and do not give the same protection as an AVO. If the respondent breaches undertakings, the protected person will need to apply for an AVO all over again.

The court may also make a final order if the respondent has been served with the application but doesn't appear at court.

8.6 Dismissal of the application

The court may dismiss the AVO application if:

- it is a private AVO application and the protected person does not appear without a good reason;
- the applicant does not want to proceed with the application; or
- the applicant agrees to accept undertakings from the defendant instead of proceeding with the AVO application.

Note that if it's a **police** application, it won't be dismissed just because the protected person doesn't want an AVO or doesn't appear at court.

9 If the defendant does not agree to an AVO being made

9.1 If there is also a criminal charge

In many cases, the respondent to an AVO application is also charged with a criminal offence (e.g. assault, intimidation).

See part 7 above, which sets out what happens if there are any related criminal charges.

9.2 If there is no criminal charge – written statements

If it's just an AVO application, without any criminal charge, the court will usually order both the applicant and the respondent to provide written witness statements to the court.

These statements must be provided to the other party (and sometimes filed with the court) according to the timetable set out by the court. Once the statements have been provided, the court will set the matter down for hearing.

For help preparing a statement, see *Instructions for Preparing a Witness Statement* at http://www.lawaccess.nsw.gov.au/Pages/representing/lawassist_avo/lawassist_forms_avo/lawassist_instructions_statement_def.aspx.

9.3 The hearing

A **hearing** is an opportunity for both parties to attend court and give evidence, along with any other witnesses who have made statements.

An AVO hearing is similar to a hearing for a criminal charge. The main difference is that the applicant only needs to prove the case on the balance of probabilities (not beyond reasonable doubt). It's also important to understand that having an AVO made against a person does not give them a criminal record.

The applicant gives evidence first, followed by whatever witnesses he or she wishes to call. If written statements have been provided, the court will read the witness's statement. The respondent or their lawyer will have the opportunity to cross-examine (question) each witness.

The respondent and his or her witnesses then have the opportunity to give evidence. Again, the court will read their statements, and the applicant or their lawyer (who may be a police prosecutor) may then cross-examine the witness.

9.4 When the court will make an AVO

To make an AVO after a hearing, the magistrate must be satisfied on the balance of probabilities that there are reasonable grounds for the protected person to fear violence, harassment or intimidation from the defendant.

In most cases the magistrate must be also satisfied that the protected person actually has these fears.

However, the magistrate need not be satisfied that the protected person actually fears the conduct of the defendant, if:

- (a) the protected person is under 16; or
- (b) the protected person has "below average general intelligence function"; or
- (c) (ADVO applications only) the protected person has been subjected at any time to conduct by the defendant amounting to a personal violence offence and there is a reasonable likelihood that the defendant may commit a personal violence offence against the person, and the order is necessary in the circumstances to protect the protected person from further physical violence; or
- (d) (ADVO applications only) the court is satisfied that the person has reasonable grounds to fear the commission of a domestic violence offence.

10 Conditions of an AVO

10.1 Mandatory conditions

An AVO will **always** contain the following conditions, usually referred to as the "**statutory**" or "**mandatory**" orders.

These will always appear on the AVO as condition number 1 (a), (b) and (c).

- (a) The defendant **must not assault or threaten** the protected person or any other person having a domestic relationship with the protected person.
- (b) The defendant **must not intentionally stalk, harass or intimidate** the protected person or any other person having a domestic relationship with the protected person.

- (c) The defendant must not intentionally or recklessly **destroy or damage any property**, or **harm an animal**, that belongs to or is in the possession of the protected person or any person having a domestic relationship with the protected person.

10.2 Additional conditions

An AVO **may** contain other types of conditions. These are numbered according to a standard system, so the applicant or the court can just tick the relevant boxes.

For example, the court may order that the defendant must not:

2. Approach the protected person or contact them in any way, unless the contact is through a lawyer.
3. Approach:
 - the school or any other place the protected person might go to for study,
 - any place they might go to for childcare, or
 - any other place listed here____.
4. Approach or be in the company of the protected person for at least 12 hours after drinking alcohol or taking illicit drugs.
5. Try to find the protected person except as ordered by a court.
6. Approach the protected person or contact them in any way, unless the contact is:
 - through a lawyer, or
 - to attend accredited or court-approved counselling, mediation and/or conciliation, or
 - as ordered by this or another court about contact with child/ren, or
 - as agreed in writing between you and the parent(s) about contact with child/ren, or
 - as agreed in writing between you and the parent(s) and the person with parental responsibility for the child/ren about contact with the child/ren.
7. Live at:
 - the same address as the protected person, or
 - any other place listed in the order.
8. Go into:
 - any place where the protected person lives, or
 - any place where they work, or
 - any other place listed in the order.
9. Go within ____ metres of:
 - any place where the protected person lives, or
 - any place where they work, or
 - any other place listed in the order.
10. Possess any firearms or prohibited weapons.

Other conditions may be added by the court, where appropriate.

10.3 Additional protected persons

The statutory or mandatory conditions (conditions 1 (a)(b) and (c)) apply not only to the protected person, but anyone in a domestic relationship with the protected person (for example, a spouse, child, or other relative). This means these people are protected from stalking, harassment, assault, property damage, etc.

However, to get any additional protection (e.g. for the defendant not to approach or contact them), these individuals will have to be named separately as protected persons in the AVO.

11 How long does an AVO last?

An AVO can be made for as **long as the court thinks is necessary** to ensure the safety and protection of the protected person.

Where the defendant is over 18, final orders are usually made for one or two years.

If the defendant is under 18, instead of making a final order, the Children's Court will sometimes make an interim order for 3-6 months and then dismiss the application if the defendant doesn't breach the interim order.

An ADVO can be made for an **indefinite period** but only if the defendant is 18 years or older and there are circumstances that give rise to a significant and ongoing risk of death or serious harm to the protected person or any dependents.

If the court does not specify a duration, the order will be made for the **default period**, which is:

- For ADVOs – 2 years if the defendant is over 18, or 1 year if they are under 18.
- For APVOs – 1 year.

12 Effect of an AVO

An AVO application is different from a criminal charge. A person who has an AVO out against them **does not get a criminal record** because of this.

However, it will be recorded on a police database and may affect a person's ability to do things such as get a security licence, own or use firearms, or work in some types of jobs.

Breaching an AVO *is* a criminal offence (see below).

13 Breach of an AVO

13.1 Offence of breaching an AVO

Knowingly breaching a provisional, interim or final AVO is a **criminal offence**.

For there to be a breach, the defendant must have known about the AVO. This usually means that they must have been served with a copy of the order or been present in court when the order was made.

13.2 If the protected person agrees to the defendant breaching the AVO

Consent is not a defence to breaching an AVO. So, if the protected person and the defendant have sorted out their differences, they cannot simply ignore the AVO.

For example, if there is an AVO that stops you from going to someone's place, and he/she says "It's OK, come over", *it's not OK!* Or if the AVO says you must not contact

the protected person, *you are not allowed to call them or message them*, even if they contact you first. In these situations you will still be guilty of breaching the AVO.

Instead, the protected person or the defendant should apply to the court to get the AVO **revoked or varied** (see next section of this document).

13.3 Penalties for breaching an AVO

The maximum penalty for breaching an AVO is two years' imprisonment, or a \$5,500 fine, or both.

The actual penalty will depend on the nature of the breach, and on the offender's personal situation and criminal history. Breaches of apprehended **domestic** violence orders, and breaches involving physical **violence**, are usually regarded as more serious and are more likely to lead to imprisonment.

14 Revoking or varying an AVO

Either the protected person, the police or the defendant may apply for the AVO to be **revoked**. The application is usually made to the court that made the AVO.

Usually the AVO will not be revoked without a very good reason, for example, the parties have reconciled and the protected person no longer needs protection.

An AVO can also be **varied**. For example, the protected person may still want an order stopping the defendant from harassing them, but might be happy for other conditions to be lifted (e.g. not to approach or contact them).

If a defendant wants to vary or revoke an **indefinite** ADVO, they must apply for the leave of the court. The court will only grant leave if it is in the interests of justice or if there has been a significant change in circumstances.

A defendant will also need leave from the court to vary or revoke an AVO which was originally taken out by the police, if any of the protected persons is **under 16**.

15 Annulment applications and appeals

15.1 Appeal or annulment application by respondent

A respondent may apply to the Local Court or Children's Court to have an AVO **annulled** (set aside) if he or she was not present at court when the AVO was made. An annulment application must be made within 2 years. Usually the respondent will have to show that there was a good reason why they did not attend court or that it is in the interests of justice for the AVO to be annulled. If it is annulled, the proceedings will start again and the respondent will have a chance to contest the AVO application if they want to.

Otherwise, the respondent may **appeal** to the District Court from a Local Court or Children's Court decision to: make an AVO, to vary or revoke an AVO, or to refuse to vary or revoke an AVO. The time limit is 28 days (or 3 months with the leave of the District Court).

15.2 Appeal or annulment application by the applicant

If the applicant was not present at court and the AVO application was dismissed, the applicant may apply to the Local Court or Children's Court to have this decision **annulled** (set aside). The court may grant the annulment if there is "just cause".

Otherwise, the applicant or a police officer may **appeal** to the District Court against a Local or Children's Court's decision to dismiss an AVO application, to vary or revoke an AVO, or to refuse to vary an AVO. The time limit is 28 days (or 3 months with the leave of the District Court).

16 Interstate enforcement of AVOs

An **ADVO** made in NSW will automatically be enforceable all over Australia if it is made on or after 25 November 2017. ADVOs (or similar orders which may have different names) made interstate will also be enforceable in NSW.

APVOs are not automatically enforceable interstate. However, an APVO made in NSW can be registered so that it is enforceable in another state. APVOs (or similar orders which might have different names) made interstate can also be registered in NSW.

17 Legal representation and court support

17.1 Court support for applicants and protected persons

There are **Women's Domestic Violence Court Advocacy Services (WDVCAS)** available at many courts, for women and their children who are victims of domestic violence offences or who are seeking protection under AVOs. WDVCAS provides court support, and may also be able to refer women for legal advice.

For more information and contact details, call 1800 938 227, 1800 WDVCAS, or see <https://www.legalaid.nsw.gov.au/what-we-do/community-partnerships/womens-domestic-violence-court-advocacy-program/womens-domestic-violence-court-advocacy-service-locations-in-nsw>

17.2 Legal representation and advice for applicants or protected persons

If the police are taking out an AVO on a person's behalf, the court case will be run by the **police prosecutor**. However, the police prosecutor will not always act on the wishes of the protected person. It can be helpful to have your own legal representative or advice if you are a protected person and what you want is different to what the police want.

If a person applies for an AVO **privately** through the court, it is usually a good idea to have a lawyer if possible, particularly if the defendant is likely to oppose the application.

Legal Aid sometimes represents applicants for **ADVOs** through their Domestic Violence Unit: <https://www.legalaid.nsw.gov.au/what-we-do/family-law/domestic-violence-unit>

Legal Aid also assists applicants for **ADVOs** through the **Domestic Violence Practitioner Scheme**: <https://www.legalaid.nsw.gov.au/what-we-do/services/domestic-violence-practitioner-scheme>, which can be contacted via **WDVCAS** (see details above).

The **Domestic Violence Legal Advice Line** operated by Women's Legal Services may be able to advise or assist women with ADVO applications: <http://www.wlsnsw.org.au/legal-services/domestic-violence-legal-service/>.

Wirringa Baiya is an Aboriginal women's legal centre that provides advice about domestic violence and AVOs: <https://www.wirringabaiya.org.au/copy-of-services>

Inner City Legal Centre (ICLC) runs the **Safe Relationships Project** for LGBTIQ+ people who are experiencing or escaping an abusive relationship. They provide court assistance and can assist clients to access legal representation or apply for ADVOs and APVOs: <https://www.iclc.org.au/our-services/safe-relationships-project/>

Applicants for **APVOs** can't obtain representation through Legal Aid. They will usually have to organise a private lawyer if they wish to be legally represented. Some Community Legal Centres or pro bono lawyers may agree to help.

17.3 Legal representation and advice for defendants

Unfortunately, it is not easy for defendants to obtain free legal representation.

Legal Aid is not usually available for defendants in AVO applications unless:

- Legal Aid is acting for the defendant on related criminal charges; or
- the defendant is under 18; or
- there are exceptional circumstances, e.g. the defendant is a victim of domestic violence themselves, the applicant is an Aboriginal woman, or the applicant has substantial difficulty dealing with the legal system because of a serious mental illness or disability.

Some Community Legal Centres or pro bono lawyers may agree to help.

18 Further information and resources

Legal Aid NSW has fact sheets for both protected persons and respondents:
<https://www.legalaid.nsw.gov.au/publications/factsheets-and-resources>

The NSW Department of Communities and Justice has fact sheets relating to domestic violence, safety, the court process and victims' rights:
<http://www.crimeprevention.nsw.gov.au/domesticviolence/Pages/publications.aspx>

LawAccess has detailed information on AVOs, including how to make an application, how to defend an application, and tips for representing yourself at court:
http://www.lawaccess.nsw.gov.au/Pages/representing/lawassist_avo/lawassist_avo.aspx

The Shopfront Youth Legal Centre Updated August 2021

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The Shopfront Youth Legal Centre is a service provided by Herbert Smith Freehills, in association with Mission Australia and The Salvation Army.

This document was last updated in August 2021 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.

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